

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 07/26/2016

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: Leah Tommela

CASE NO: **56-2014-00461060-CU-NP-VTA**

CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion to Disqualify Attorney of Record (CLM)

MOVING PARTY: P.Q.L Inc

CAUSAL DOCUMENT/DATE FILED: Motion to Disqualify Attorney of Record and require forfeiture of compensation memo of points and authorities and Declaration, 06/28/2016

EVENT TYPE: Motion - Other (CLM) to Enforce the Courts Prior Orders and Request for Monetary Sanctions in the amount of 3160 and Issue Sanctions

MOVING PARTY: Revolution Lighting Technologies Inc a Delaware Corporation

CAUSAL DOCUMENT/DATE FILED: Motion - Other to Enforce the Courts Prior Orders and Request for Monetary Sanctions in the amount of 3160 and Issue Sanctions, Memorandum of Points and Authorities and Declaration of Nicholas Kanter in Support thereof, 06/16/2016

APPEARANCES

Deobrah F. Sirias, specially appearing for counsel Thomas S Kidde, present for Defendant, Cross - Defendant, Cross - Complainant(s).

Nicholas Kanter, counsel, present for Defendant, Cross - Defendant(s).

David Y. Yoshida, specially appearing for counsel T Randolph Catanese, present for Cross - Defendant, Cross - Complainant, Plaintiff(s).

At 09:11 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Plaintiff will submit on the Court's tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

Matter is taken under submission.

Upon further review of submitted matter, the court rules as follows:

As to Motion to Enforce the Court's Prior Orders and Request for Monetary Sanctions, the court's ruling is as follows:

Deny the Motion to Enforce the Court's Prior Orders and Request for Monetary Sanctions. Impose sanctions against defendant and counsel in the amount of \$1,885 due and payable within 30 days.

On May 26, 2016, this court appointed Hon. John Zebrowski as discovery referee in this matter to " . . . hear and determine the *present and all future discovery disputes in the instant case.*" (Cantanes declaration, Ex. C, Item 1.) [Italics added.] The order specifically states that all parties consented to the appointment of the referee and exceptional circumstances require a referee including the likelihood that discovery disputes will recur in the instant case. (*Id.*)

As to Motion to Disqualify Counsel, the court's ruling is as follows:

Deny the motion to disqualify counsel.

Discussion:

Plaintiff contends that Lewis Brisbois can no longer represent the individual defs because it is incapable of proving them complete and unbiased advice to protect their conflicting interests. According to Pl, Mr. Fein's testimony at his deposition directly implicated Mr. Delgado and Ms Warnes in intentional conduct harming PQL.

As to Mr. Delgado's culpability, Mr. Fein testified that:

- Mr. Delgado stole a PQL customer list and took it to Revolution Lighting (Decl. of T. Randolph Catanes, ¶5, Ex. C, pg. 116-117);
- Mr. Delgado made it widely known at Revolution Lighting that he had the customer list (*Id.*);
- Mr. Fein strongly objected to Mr. Delgado's possession of the list (*Id.* at pg. 120-121);
- Mr. Delgado actively solicited existing PQL customers while at Revolution Lighting (*Id.* at pg. 163).

As to Ms. Warnes' culpability, Mr. Fein testified that:

- Ms. Warnes compiled information about Welk Properties, a prospective PQL customer, and entered it in PQL's confidential database (*Id.* at pg. 160);
- Ms. Warnes stole this confidential information and used it at Revolution Lighting to secure Welk Properties' business (See *Id.* at pg. 161 and 173);
- The account secured a \$250,000 contract for Revolution Lighting (*Id.*).

According to movant, this represents a potential conflict. As noted in the motion, before Mr. Fein's deposition, the individual defs stood in unison with their former colleagues. After his deposition, it is argued that the individual defs need guidance from independent counsel since the clients' adverse positions create a zero sum game in which any benefit to one would adversely affect the interests of the others. In the opposition, Revolution disputes that a conflict even exists. The opposition explains that Lewis Brisbois substituted in as counsel for the individual defs on July 7, 2015. During the course of its representation, Lewis Brisbois obtained conflict-waiver letters from each of the individual defs.(Deborah Sirias declaration.) Before obtaining each conflict waiver, and at other junctures in this litigation, Lewis Brisbois continuously evaluated discovery responses, deposition testimony, documents produced by the parties in discovery, and communicated regularly with its clients to determine whether an actual or potential conflict exists. Lewis Brisbois concludes none exists.(Sirias decl., ¶3.)

On May 26, 2016, PQL took Fein's deposition, which was arranged by Fein's counsel in another case (the "Note" case, a separate action between Mr. Fein and Mr. Sreden.) Counsel for Fein in the present action (LB) attended the deposition. According to Lewis Brisbois, "surprisingly," none of PQL's inquiries related to the Note case. Instead, PQL's counsel elicited information from Fein regarding an instance in which Fein (who is no longer a def) "may have" seen a customer list being held by Delgado. (Motion, page 3, lines 21-24.) Fein also testified that Warnes did a job walk for a PQL client, Welk Resorts ("Welk") and "likely" used the data for a bid to Welk when she went to work for def Revolution Tech.(Motion, page 3, line 24 through page 4, line 2.)

Lewis Brisbois points out the PQL maintains that these two revelations "substantiate" the actual conflicts of interest between the individual defs. At most, the two incidents show that Fein may be mistaken about the customer list and his supposition about the job walk may be incorrect. In any event, according to Lewis Brisbois, Mr. Fein's conclusion re: Warnes' job walk at Welk is not based on personal knowledge. As set forth in the declaration of Larry Welk, filed in connection with the individual defs' MSJ, Welk was a pre-existing client of Warnes even prior to her employment with PQL and Warnes did not solicit Welk at Revolution. (see Welk Declaration attached to declaration of Sirias as Ex. A.)

Even assuming that PQL has standing, the court is not convinced that a conflict exists warranting recusal.

Notice to be given by the clerk.